

REMARKS

I. Status of the Claims

Claims 1-17 and 44-47 were previously cancelled. Claims 48-54 have been cancelled herein without prejudice or disclaimer.

Without prejudice or disclaimer, claim 18 has been amended. Support for the amendments can be found in the specification as originally filed, for example, lines 25-25 at page 3, and lines 7-10 at page 5. Accordingly, there is no new matter.

Claims 18-43 are pending and subject to examination with entry of this amendment.

II. Claim Rejections under 35 U.S.C. § 102

The Office maintains the rejection of claims 18-19, 21-25, 27, and 34-36 under 35 U.S.C. § 102 (b) as allegedly “being anticipated” by Clay (U.S. Patent No. 5,775,344) for reasons as set forth at page 2 of the Office Action. Specifically, the Office asserts that Clay teaches an applicator with two occlusive surfaces, and a battery that is not integral with the applicator. Applicant respectfully disagrees and traverses for the reasons of the record and for at least the following reasons.

Without addressing the merits of the Office’s rejection, Applicant notes that the current claims as amended recite, *inter alia*, “a carrier selected from wipes and patches”. In contrast, Clay teaches an applicator formed by a rod and brush. Accordingly, the rejection should be withdrawn.

The Office also maintains the rejection of claims 18-23, 25-26, and 29-30 under 35 U.S.C. § 102 (b) as allegedly “being anticipated” by Strack et al. (U.S. Patent No. 4,913,957) for reasons as set forth at page 3 of the Office Action. Specifically, the

Office contends that Strack teaches a laminate comprising two non-occlusive laminate surfaces (layers 14 and 18 of figure 1, Strack), and the claims of this application do not recite that both surfaces must concurrently comprise the cosmetic. The Office thus concludes that the material as taught by Strack meets the claimed limitation. Applicant respectfully disagrees and traverses this rejection for the reasons of the record and for at least the following reasons.

Applicant respectfully submits that the Office is mistaken in equating nonporous to non-occlusive. Strack teaches the use of a laminate to impart treatment liquids/lotions to the skin. See Abstract. That laminate comprises a skin contact layer 12 which is impregnated with the treatment lotion, a first nonporous or low porous barrier layer 14, a reservoir layer 16 which is impregnated with a heat retention liquid, and a second **nonporous** barrier layer 18. See Figs 1 and 2, and col. 3, lines 36-42. The specification indicates that the purpose of the nonporous barrier layer is to inhibit the interaction between the heat retention liquid and the treatment lotion. Additionally, the purpose of the nonporous barrier layer 18 is to inhibit the escape of vapor. See lines 20-25 at col. 5. As such, the specification makes clear that the passage of substances (e.g., vapor, the heat retention liquid or the treatment lotion) through the **nonporous** layer is inhibited. In contrast, the current claims recite a carrier comprising two opposite **non-occlusive application** surfaces **allowing at least part of the cosmetic product arranged on or in the carrier to pass through said carrier**. Strack thus does not anticipate the present claims as amended and this anticipation rejection over Strack should be withdrawn.

V. Claim Rejections under 35 U.S.C. §103(a)

A. Over Desnos

Claims 18-20, 24, 26-27, 29-33, and 37-43 are rejected under 35 U.S.C. § 103 (a) as allegedly “being unpatentable” over Desnos (UK Patent Application Publication GB 2,321,443) for reasons as set forth at pages 3-5 of the Office. Applicant respectfully disagrees and traverses for at least the following reasons.

Applicant respectfully submits that the current claim as amended are distinguished from Desnos. Desnos teaches a container for epilatory wax that includes a lid and an application device, such as a spatula. The wax is heated in the container instead of being heated after being put on the application device such as a spatula, page 2, lines 1-9, whereas the current claims recite “increasing temperature of a cosmetic product **arranged** on or in a carrier”. Further, contrary to the Office’s position that the spatula has two opposite non-occlusive sides, Desnos is silent on whether the two sides of the application device such as a spatula are non-occlusive. Desnos states that the spatula can be made of wood or plastic. Wood and plastic, however, are generally incapable of allowing cosmetic product to pass through. Moreover, a spatula is not a wipe or patch. In sum, Desnos does not teach or motivate a skilled artisan to heat the wax arranged on the application device such as a spatula. Neither does Desnos teach or suggest to use as an application device a wipe or patch allowing wax to pass through because the sticky nature of wax teaches against such a use. As such, the Office fails to establish a *prima facie* case of obviousness over Desnos. This rejection should be withdrawn.

B. Over Clay in view of Poucher’s

The Office maintains the rejection of claim 28 under 35 U.S.C. § 103 (a) as allegedly “being unpatentable” over Clay in view of Poucher’s (“Poucher’s Perfumes, Cosmetics, and Soaps”, 10th Edition, 2000, pages 199-202) for reasons as set forth at pages 5 of the Office Action. Applicant respectfully disagrees and traverses the rejection for the following reasons.

As discussed above, Clay does not teach or suggest a carrier selected from wipes and patches as currently recited in claim 18, as amended. The Office relies on Poucher’s for the teaching that mascaras can comprise water. As such, Poucher’s does not rectify Clay’s deficiency. Those two references, alone or in combination, do not render current claims obvious. This rejection thus should be withdrawn.

C. Over Strack

The Office maintains the rejection of claims 31-33 under 35 U.S.C. § 103 (a) as allegedly “being unpatentable” over Strack for reasons as set forth at page 6 of the Office Action. Applicant respectfully disagrees and traverses the rejection for the following reasons.

As discussed above, Strack does not teach a carrier comprising two opposite non-occlusive application surfaces as currently claimed, as amended. Neither does Strack suggest or motivate a skilled artisan to make such a carrier. Strack teaches away from modifying the barrier layer 18 into a non-occlusive layer. Strack teaches that the barrier layer 18 inhibits the escape of vapor so that the laminate retains heat better. See col.3, lines 22-25. As such, a skilled artisan would not modify the barrier layer 18 into a non-occlusive layer because doing so would diminish the heat storage ability of the laminate, thereby being contrary to the goal of Stack’s teaching. Strack therefore

does not render the present claims, as amended, obvious, and this rejection should be withdrawn.

CONCLUSIONS

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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